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ABSTRACT

Legislation regarding penalty severity and control over punishment raises questions about the effect of potential penalties on verdicts. Experimental evidence from previous studies is mixed and subject to debate over the worth of simulations. In this study it was expected that the effect of penalties on verdicts would depend on strength of evidence and whether the jurors themselves awarded punishment. Students in introductory psychology classes were used as participants, with a total of 215 taking part. They were given either strongly or mildly incriminating evidence about hypothetical cases, such as an alleged cheater, and asked to evaluate guilt. Potential punishments were characterized as either mild or severe, and were to be selected by either an authority or a student jury. Severe penalties did not generally reduce certainty of guilt, but did lead to fewer convictions when evidence was mildly incriminating and an authority controlled a real punishment. Also, jurors given a mildly incriminating case with real consequences were more certain of guilt, and more willing to convict, when they, rather than an authority, controlled future punishment. Implications were discussed for effects on verdicts of: (1) increased stringency in mandated penalties; (2) real versus simulated conditions; and (3) having jurors rather than judges decide punishment. (Author/IS)

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Severe Penalties Under the Control of Others Can Reduce Guilt Verdicts

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Severe Penalties Under the Control of Others

Can Reduce Guilt Verdicts

Abstract

Legislation regarding penalty severity and control over punishment raises questions about the effect of potential penalties on verdicts. Experimental evidence is mixed, and subject to debate over the worth of simulations. It was expected that the effect of penalties on verdicts would depend on strength of evidence and whether the jurors themselves awarded punishment. College students were given either strongly or mildly incriminating evidence about either an alleged cheater, or a similar, hypothetical case, and evaluated guilt. Potential punishments were characterized as either mild or severe, and were to be selected by either an authority or the student jury. Severe penalties did not generally reduce certainty of guilt, but did lead to fewer convictions when evidence was mildly incriminating and an authority controlled a real punishment. Also, jurors given a mildly incriminating case with real consequences were more certain of guilt, and more willing to convict, when they, rather than an authority, controlled future punishment. Implications were discussed for effects on verdicts of (1) increased stringency in mandated penalties, (2) real vs. simulated conditions, and (3) having jurors rather than judges decide punishment.

In rational decision making, people are mindful of the consequences of their decisions. One consequence of courtroom decision making in criminal cases is the punishment assigned to the convicted defendant. Intuiting a relationship between potential consequences and guilt verdicts, the Supreme Court, in its landmark Witherspoon v. Illinois (1968) decision, assumed that persons' concern over a severe consequence--the death penalty--could affect their willingness to convict. While not directly addressed in Witherspoon, this implies that penalties with different severity values can produce different conviction rates. This judicial wisdom has a long history; Gleisser (1968) for example, cites conclusions reached in mid-19th century France that jurors are preoccupied with punishment and that many aquittals may be due to fear of imposing too harsh a sentence (see also Kerr, 1978, for other historical anecdotes). The impact of penalty severity on verdict has relevance beyond the death penalty; many states have recently enacted legislation imposing harsher penalties for non-capital felonies while simultaneously reducing sentencing discretion by trial judges (see, eg., Clarke and Rubinsky, 1981).

Subsequent to Witherspoon v. Illinois, empirical evidence has emerged to suggest that penalty severity can affect decisions to convict (Kaplan & Simon, 1972; Kerr, 1978; Vidmar, 1972). Specifically, increased penalties produced lower conviction rates in mock juries. But the findings are not unanimous; other studies have failed to produce penalty severity effects on guilt judgments (Davis, Kerr, Stasser, Meek, & Holt, 1977; McComas & Noll, 1974), while one study found that a more serious penalty (death sentence) reduced convictions compared to a less

serious penalty (prison sentence) only when the crime was less heinous (Hester & Smith, 1973). The Hester and Smith (1973) study suggests that the nature of the crime moderates the effect of a severe penalty on decisions to convict.

In addition to penalty severity, another aspect of consequences which could affect verdicts is their reality. Judging the guilt of a hypothetical offender is one matter; reaching a verdict which could lead to a real penalty for a real person is another. Indeed, this difference is at the heart of disaffection with the large mass of studies which employ simulated juries (David, Bray, & Holt, 1977). Some evidence exists that real juries reach different verdicts than simulated juries. Diamond and Zeisel (1974) found that real juries were less likely to convict than were yoked observers, but Wilson and Donnerstein (1977), in a less serious case (cheating by a college student) found <u>simulated</u> jurors less likely to convict than those believing their decisions were real. Here, too, it seems that characteristics of the case (i.e., cheating vs. felony) may determine effects of realness of the consequences on verdicts.

The present experiment seeks to establish further limits to the effect of punishment consequences on juror verdicts. In addition to reality of the consequences, several factors seem likely candidates for affecting the salience of punishment severity for guilt verdicts. First, it might be expected that the guilt appearance of the evidence should interact with potential consequences of conviction. As the evidence more clearly points to guilt, it should become increasingly more difficult to deny the defendant's guilt because of severe penalty

options. Second, who controls the penalty should affect the extent to which jurors are mindful of the penalty in their guilt decisions. In some decisions (e.g., capital criminal cases and most civil cases), the penalty is decided by the same jurors who reached the guilt (or responsibility, in civil cases) decisions, while in other cases, another party (e.g., the judge) assigns punishment. If jurors know that they will be deciding the punishment, they may be more willing to convict in the face of potentially severe penalties knowing that they can mollify overly severe consequences during the penalty phase.

Studies of the impact of punishment severity have not systematically varied strength of evidence, source of the punishment decision, or real versus hypothetical consequences, although these may be factors which bear on how punishment will weigh on the judgment of guiltiness. Discrepant findings may be due to studies employing different appearances of guilt in the evidence, or giving different implications for realness of consequences, or leaving the question of who controls the punishment ambiguous. In this study, college students were asked to judge the guilt of a student accused of cheating given either strong or weak evidence, and were told that either they or an authority would select a punishment, if convicted, from a range of mild to moderate, or moderate to severe penalties. Students were led to believe that the judgments were real and binding, or were an experimental simulation. It was expected that effects of penalty severity would be clarified by examining control over penalty and strength of evidence. Similarly, the difference between real and

simulated decisions should be clarified by varying severity and control of penalty.

Method

Overview and Subjects

Students in eight introductory psychology classes at Northern Illinois University judged the guilt or innocence of, and recommended punishment for, a student accused of cheating in another class. The evidence was either high or low in normative guilt appearance, and potential punishments for cheating were either severe or mild. Moreover, control over punishment was given to either the students or the accused's instructor. The design was repeated for a different set of introductory psychology students, who were asked for hypothetical judgments which would have no bearing on the case. Thus, a 2 x 2 x 2 x 2 factorial design was employed, with between-subjects treatments of strength of evidence, locus of control of punishment, severity of punishment, and real versus simulated consequences.

Each class constituted a cell of the evidential strength *by* control of punishment *by* severity of punishment design for *real consequences* conditions. Two hundred and fifteen subjects participated in these conditions, in classes ranging from 18 to 34 students (that is, there were 18 to 34 subjects per cell, with sex roughly equal within cells). In the *simulated judgment* conditions, 186 subjects took part in one of eight group sessions, one session to each cell of the design. Each session employed 18 to 25 subjects.

In both real and simulated conditions, data for subjects were eliminated from analysis by random selection so that each cell would uniformly contain 18 subjects. Responses of discarded subjects were compared to those of retained subjects by means of t-tests for unequal groups, and no significant differences were found for any cell. The final sample, then, consisted of 18 subjects per cell, or 144 in the real, and in the simulated conditions.

Pilot Work and Materials

Fifty students participated in the stimulus scaling phase. They were asked to assume that a student had done well on an introductory psychology multiple-choice test, and were given 18 short descriptions of evidence relating to potential cheating. Each description was rated on a 21 point scale for its incriminatory value for cheating (0 = absolutely non-incriminating, 20 = absolutely incriminating). Thus, higher ratings indicated a greater appearance of cheating guilt. After all ratings, students were given a list of 22 possible punishments for cheating (assuming guilt was clear for the offender), and asked to rate the severity of each on a 21 point scale (0 = extremely mild punishment, 20 = extremely severe punishment).

The mean ratings of evidence items ranged from 7.00 to 16.95, with a median standard deviation of 5.47. Four items were selected to represent a low appearance of guilt (mean rating = 8.30; range from 7.60 to 9.17) and four items were chosen to represent a high appearance of guilt (mean rating = 14.30; range from 13.47 to 15.17). Items with high variability (SD > 5.62) were not included in these sets. Examples of

the two types of evidence are, respectively: The student turned in his/her test almost immediately after the person sitting next to him/her turned in hers, and The student's test score was 61 out of 70. The person next to him/her had a score of 65 out of 70. The items on which they had errors were almost identical.

The mean ratings of punishment items ranged from 3.78 to 18.73, with a median standard deviation of 5.84. The median items received a severity rating of 12.04. Three items were selected to range from mild to moderate severity (mean ratings: 3.78, 7.69, and 9.95), and three items were selected to range from moderate to high severity (mean ratings: 9.95, 15.08, and 18.39). Items with high variability (SD > 6.0) were not included in these sets. Examples of mild, moderate, and severe punishments are, respectively: Ignore the situation. Let it pass, but be more observant on the individual on the next test (3.78); Take the matter to the university counselors (9.95); and Fail the student in the course (18.39).

The cover stories told subjects that either they, or the professor in charge of introductory psychology would determine punishment. A pilot study tested the cover story credibility. Two cells of the design were tested in the summer session preceeding the experiment; in both cells, punishment alternatives were moderate to severe and evidence was mildly incriminating, but subjects were told that either they (N = 22) or the authority (N = 14) would control the punishment. Two psychology instructors presented the cover stories to their respective classes, saying that a student in another section of theirs was suspected of cheating. Students individually decided whether they felt the person

was guilty, and rated their confidence in their decision (0 = not very confident, 10 = very confident). Twenty of the 22 students who believed that they controlled punishment chose guilt, with a mean confidence rating of 6.68 for the sample, while nine of the 14 who believed an authority controlled punishment chose guilt, with a mean confidence rating of 2.29. Thus, less confidence was expressed when another party controlled punishment. Systematic questioning, followed by open discussion, disclosed that the procedure was believable; students were highly involved in discussing the case and its consequences.

Procedure

Real Consequences

Four female instructors in the introductory psychology course acted as experimenters for their classes in the eight real consequences treatments conditions. Each instructor had two classes, and each of the eight resulting classes constituted one cell of the real consequences design. That is, each class was given a different treatment, but all were led to believe that their verdicts had real consequences.

All instructors gave the same background instructions, as follows:

> A situation in my other class has come up and I'm really having problems with it. I think one of the students might have been cheating on the last exam, but I'm really not sure. This is an important decision with some very real consequences and I don't feel comfortable in making the decision alone. So I would like to present the class with the information that I have and have you come to a decision. If any of you don't

feel comfortable in this decision, I totally understand and you have complete freedom not to become involved.

No student declined participation, and further instructions were not read, but paraphrased to enhance credibility. To insure standardization, instructors were thoroughly rehearsed in their presentation, so that presentation of the cover story was smooth and comparable across instructors.

Specific instructions depended on the treatment conditions, which were randomly assigned to instructors. Each instructor gave both her classes the same treatment regarding the evidence (high or low guilt appearance) and severity of punishment (mild-moderate or moderate-severe), but told students in one class that they would assign punishment, and in the other, that the professor administering the introductory sections would do so. The class to be given student control of punishment was determined by coin-toss. In all cases, students were assured that their majority vote on guilt would be honored by the department.

Specific instructions encompassed control of punishment, severity of punishment, and strength of evidence. Classes were informed either that they would vote on the punishment, or that the professor supervising introductory psychology classes would select the punishment. Then, the class was informed of the potential punishments for cheating, that is, either the three ranging from mild to moderate, or the three ranging from moderate to severe. Finally, they were told the four

pieces of evidence, which gave either a strong or a weak appearance of guilt.

The following responses were recorded by students on notebook paper and turned in to the instructor:

1. A verdict of guilt or innocence.
2. A rating, on a 10 point scale, of confidence in their verdict (1 = not very confident; 10 = very confident). The scale was given verbally by the instructor and students recorded their numerical response on their notebook paper.
3. Selection of one of the three punishment alternatives. Since the vote could not be known prior to collection, it was reasonable to ask for preferences for punishment at the same time of the vote "in case" the class found the student guilty. In the instance where an authority controlled punishment, this selection was characterized as advisory, but not binding on the professor.

After these responses were completed, students were asked to write their comments, concerns, or feelings about the procedure. This was intended to assess the credibility of the deception. Three cases in the entire sample were found which showed awareness of the deception, and these students were eliminated from the sample. Upon collection of the papers, classes were debriefed by one of the authors, who conducted a discussion of deception in psychological experiments and of cheating for the remainder of the class period.

Simulated Decisions

A separate sample of students were asked for the same responses as in the Real Consequences conditions, but with the knowledge that the task was hypothetical. These were volunteers from introductory psychology classes, who received credit for participation, and who met outside of their regular classes. The evidence, punishment source, and alternatives were identical to the information students received in the Real Consequences conditions except for the hypothetical nature of the task. Subjects were read the following instructions:

> Hello, my name is _____. Thank you for participating in experiment 13. Currently in psychology there is a lot of research being done on attitudes. Today we will be interesting in getting information about your attitudes on cheating behavior. The scales I will be handing our are all different, they give different instructions depending on which situation you will receive. Please read them carefully. If there are any questions, please ask. It is very important to this experiment that you really put yourself into the position that the scenario requires. Imagine how you would think, feel, and act in such a situation. Are you all familiar with the term role-playing? (Brief description if necessary.) That is what I am asking you all to do today. Any questions?

The written scenario set the scene of the students being in their Psychology 102 class and having their instructor inform them that someone in another class was suspected of cheating. All the other

information was identical to that received in the real decision setting. The particular scenario each student received with regard to evidence, locus of control of punishment, and range of punishment was determined randomly. As in the real setting, the subjects were asked to decide on a guilty/not guilty verdict, to indicate on a ten point scale how confident they felt in their decision, and to assign punishment (or in the case where the authority had control over the punishment, to indicate how they felt about the possible punishments.)

After the students completed the questionaire, they were informed about the nature of the experiment, and thanked for their participation. Results of the experiment were made available to interested students. --

Results

Verdicts

The number of guilty verdicts for each level of guilt appearance of evidence as a function of source and severity of punishment, and realness of consequences, is found in Table 1. The maximum number of guilt verdicts in any entry was 18. It is immediately seen that source, severity, and real/simulated variations had no significant effects on conviction votes when the evidence gave a high appearance of guilt ($X^2(7) = .16$), but did affect votes when evidence guilt appearance was low ($X^2(7) = 11.35$, $p < .001$). In the latter case, conviction votes were lowest when an <u>authority</u> controlled a severe punishment and students believed their votes would have real consequences. On the other hand, conviction votes were most numerous, and were as likely as

when evidence was highly incriminating, when students controlled either mild or severe punishment and consequences were presumably real.

Chi Square comparisons were made in the low appearance case between real and simulated conditions, both overall, and within levels of punishment severity and control. The following comparisons reached significance at the .05 level or better:

1. Severe punishment: Convictions were greater in simulated than in real conditions when an authority controlled ($X^2(1) = 4.45$) but greater in real conditions when a student controlled ($X^2(1) = 6.00$).
2. Mild punishment: Convictions were greater in real than in simulated conditions when students controlled ($X^2(1) = 3.85$), with no significant differences occuring when an authority controlled.
3. When consequences were real, students were more likely to convict when they, and not an authority, controlled punishment, both when punishment was mild ($X^2(1) = 3.85$) and severe ($X^2(1) = 12.80$). No significant differences due to source or severity were found when conditions were simulated.
4. Overall, real consequences marginally produced more conviction votes than did simulation in the low guilt appearance case ($X^2(1) = 3.36$, $p < .08$).

Supplementary Chi square analyses were run deriving the expected value from the appropriate row by column frequencies (Hardyck &

Petrinovich, 1969), pp. 159-162). Similarly, the expected values for the three-way Chi squares were derived by obtaining the mean for the row by column by cube frequencies. The following effects, all with 1 df, were significant ($p < .001$) and essentially supported the previous analyses.

A main effect was found for strength of evidence ($X^2 = 22.32$). A two-way interaction was found between strength of evidence and source of punishment ($X^2 = 63.93$). Three-way interactions were found in the real decision condition between evidence, source, and severity of punishment ($X^2 = 11.47$), and in the weak evidence case between decision condition, source, and severity of punishment ($X^2 = 11.35$). A four-way interaction was found between decision condition, strength of evidence, source, and severity of punishment ($X^2 = 28.65$).

Insert Table 1 about here

Certainty of Guilt

Students had rated their confidence in their verdict on a ten-point scale. Ratings were given a positive sign if the verdict was guilt, and a negative sign, if innocent, thereby producing a certainty of guilt score potentially ranging from +10 to -10. To eliminate negative values, a constant of +10 was added. The resultant scores represent each student's certainty in the accused's guilt, with high scores indicating progressively greater certainty of guilt. Mean scores for the experimental design are given in Table 2. An analysis of variance[1] disclosed main effects for strength of evidence ($F(1,272) = 70.34$,

$p < .001$), source of punishment ($F(1,272) = 3.93$, $p < .05$) and type of decision ($F(1,272) = 11.32$, $p < .001$), but these are qualified by the interaction between the above three variables ($F(1,272) = 11.16$, $p < .001$), and by the two-way interactions between strength of evidence and type of decision ($F(1,272) = 5.12$, $p < .025$), and evidence and source ($F(1,272) = 13.61$, $p. < .001$). Consequently, separate analyses were conducted for each strength of evidence condition.

Insert Table 2 about here

No significant effects were found when evidence was strong; strength of belief in guilt was uniformly high. When evidence was weak, however, students were more certain of guilt in real conditions ($\bar{x} = 9.16$; $F(1,136) = 11.81$, $p < .001$). Moreover, students reported greater certainty of guilt when they controlled punishment ($\bar{x} = 12.55$) than when an authority would select punishment ($\bar{x} = 9.1$[illegible]; $F(1,136) = 12.01$, $p < .001$). Finally, an interaction in the weak case between decision conditions and source of punishment $F(1,136) = 13.68$, $p < .001$) discloses that students who controlled punishment were more certain of guilt than those who did not control punishment when consequences were real ($t(34) = .86$).

Both verdicts and certainty of guilt scores, then, showed similar patterns. The case with strong evidence for cheating was impervious to influence by source or severity of punishment, or type of decision task. When the evidence was weaker, however, source and decision task had interactive effects. In the real consequences condition, students were

more certain of guilt when they, and not the authority controlled punishment. Control of punishment did not matter, however, when the consequences were hypothetical. In both response measures, the most lenient responses were found when an authority controlled a severe punishment with real consequences, although statistical significance was present only for verdicts. Punishment severity had no effect upon certainty scores, and it lessened guilt verdicts only when consequences were real, and then, only when an authority controlled punishment.

Punishment

Students selected (or recommended, in the authority source condition) a punishment from the three potential penalties in the mild-moderate or moderate-severe range. Each student's choice was assigned its normative value from the pilot study. The mean punishment severity values (see Table 3) were subjected to an analysis of variance.

Insert Table 3 about here

Naturally, more severe punishments were assigned in the severe punishment condition than in the mild condition ($F(1,272) = 356.10$, $p. < .001$); this simply reflects the severity of punishments available for selection. Also unsurprisingly, more stringent punishment was assigned when evidence was strong than when weak ($F(1,272) = 7.92$, $p. < .005$). A two-way interaction between strength of evidence and source of punishment ($F(1,272) = 11.56$, $p. < .001$) led to separate analyses for each level of evidence. Only the severity of punishment

significantly affected punishments assigned in the strong evidence case ($F(1,136) = 216.33$, $p. < .001$), while severity ($F(1,136) = 142.42$, $p. < .001$) and source of punishment ($F(1,136) = 9.97$, $p. < .005$) were significant factors in the weak evidence case. In the latter, students in control assigned more stringent punishments than did students who recommended punishments to an authority.

Discussion

Real vs. Simulated Conditions

Diamond & Zeisel (1974) concluded that real jurors adopt a higher criterion than do simulated jurors, but here it seems that the opposite occurred; real jurors were more likely to convict, and were more certain of the defendant's guilt. Criterion was affected in the manner suggested by Diamond & Zeisel only when a severe penalty was controlled by authority. Why did real jurors react more stringently than simulated jurors in the other cases? Here, students were judging other students in a case with direct personal involvement: cheating on a test which the jurors had undergone. There is a difference between evaluating a defendant on a charge which is removed from a juror's experience (e.g., robbery) and one with which jurors can identify in their personal lives (e.g., income tax fraud). In the latter, jurors may adopt both a lower criterion and a greater belief in guilt where there is a chance of someone getting away with something they just suffered through. One has a personal investment in rooting out cheaters. Two morals may be advanced regarding simulation. First, one cannot assume the effect of inducing appearance of real consequences to be unidirectional (i.e.,

leading to greater leniency). Second, the effect of real consequences (opposed to hypothetical) is complex. Real consequences result in different verdicts and certainty of guilt if evidence is mildly incriminating and jurors control punishment. Thus, real conditions have different effects than simulated when evidence is mildly incriminating; the direction of this difference, whether toward greater leniency (Diamond & Zeisel, 1974) or stringency(here and in Wilson & Donnerstein, 1977), depends on the juror's personal involvement in the issue. It would be interesting to replicate this study, varying also the degree of juror's involvement in the charge. On a related note, Kaplan & Miller (1978) found that parents of females were more stringent than parents of males in a rape case only when circumstances of the incident were likely to be encountered by their respective children. This suggests that personal biases toward conviction or acquittal can be engaged when circumstances of the case are personally relevant.

Severity of Penalty

Contrary to expectation, severity of penalty did not have a substantial positive effect on offender evaluations. Severe penalties did not reduce subjects' certainty of guilt, and led to fewer convictions when evidence was mildly incriminating and an authority controlled a real punishment. This single effect for a severe punishment should be taken seriously in light of the general tendency for students in the "real" conditions to be more stringent than those in the simulated conditions. It appears that severe punishments exert their dampening effect on convictions when the greatest chance of unjust harm might befall the defendant. The chance of unjust harm is lessened,

and consequently severe punishment has less impact on conviction rate, when incriminating evidence is strong, jurors control a real punishment or the punishment is hypothetical, the crime is heinous (Hester & Smith, 1973) or the consequences to the victim are severe (Davis, Kerr, Stasser, Meek, & Holt, 1977). The present findings, along with the cited studies, set limits on the effect of severe punishments.

The findings also align with findings in a hypothetical rape case (Davis, et. al., 1977). In the latter, subjects expecting to decide the sentence were more likely to convict than those without control over sentence. Davis et. al. did not vary the strength of evidence, so the present experiment adds that the control factor will be operative in weak evidence cases, and with severe penalties. Besides showing limitations to the control factor, this study strengthens Davis' preliminary findings by demonstrating the effect of punishment control where simulated jurors felt they were dealing with a <u>real</u> case.

Why did severity affect verdicts (in weak evidence conditions) and not students' subjective certainty of guilt? Apparently verdicts are determined by more than one's assessment of guilt. Applying a signal detection theory analogue, Thomas & Hogue (1976) and Nagel & Neff (1979) suggest that appearance of guilt must surpass a certain criterion to lead to a guilty verdict. For example, if one follows the Blackstone rule that it is better that ten guilty go free than that one innocent suffer, a .91 probability of guilt must be reached before conviction (Nagel & Neff, 1979). It may be that the critical probability of guilt is shifted upwards by an overly severe potential penalty not under the juror's control. This possibility is worthy of quantitative test.

In 1978, Illinois passed the Class X Statute designed to deter serious crimes by imposing mandatory heavy penalties for repeated or violent crimes. Similarly, many states, e.g., North Carolina, carry strict, mandatory penalties for crimes involving firearms. The Illinois law has eliminated parole, and limited the Judge's latitude in sentencing. According to the present findings, such laws may reduce convictions in weaker cases, and where the sentencer has little or no latitude in restricting punishment severity.

Thus, jurors' awareness of penalties can have an effect on conviction rate in certain cases. This brings into question whether jurors should be kept ignorant of likely penalties. Carried further, the empirical conclusion may bear on another policy. California requires that juries be instructed, during the penalty phase of capital case, that the Governor may commute the alternative sentence of life imprisonment without parole, thereby allowing eventual release. Juries are not informed that the death penalty may be commuted as well. The policy of whether to inform juries of <u>all</u> potential consequences of a particular verdict is a legal issue (California v. Ramos, 1983). These findings suggest that knowledge of a severe penalty may reduce convictions in weaker cases. Conversely, knowledge that an authority can <u>reduce</u> penalty severity may well <u>increase</u> convictions in such cases, or reduce the juror's reluctance to impose the death penalty.

<u>Control of Punishment</u>

The lack of previous research into which party controls punishment is a serious omission, since jurors, sometimes decide both guilt and

punishment (e.g., civil damage awards; capital cases). Similarly, in bench trials, the judge controls both decisions. The merits of jury vs. judge sentencing have been received elsewhere (Presidential Task Force, 1967) but without citing empirical evidence. The present study may help explain one of the discrepancies: In most cases where jurors and judges disagree, the jurors were more acquittal prone (Kalven & Zeisel (1966). Without knowing what punishment will be set by a third party, jurors may be less willing to convict in a weaker case and run the risk of an overly severe penalty. On a similar note, Kalven & Zeisel speculate that jurors more frequently acquit when the crime is trivial, but the penalty is particularly severe.

It is interesting to speculate why controlling students assigned stricter punishments than did those who merely recommended punishments to a controlling authority. Perhaps the noncontrolling students were trying to give a message to go easy on the defendant. With punishment out of their hands, they were afraid that a callous authority would give a punishment stricter than their own, so they tried to apply a corrective to the authority's presumed stringency. Alternatively, it may be simply that those students in control of punishment also had a greater certainty of guilt and felt less constraint to punish. Table 3 supports the latter. If noncontrolling students were afraid of what the authority might do, the fear would be more pronounced in real than in simulated conditions where there is little chance that a hypothetical authority would be too severe on a hypothetical defendant. However, Table 3 shows no difference for the effect of source between real and simulated conditions.

Recall that stronger penalties were given in real than in simulated conditions. This was attributed to a stronger desire to catch and punish transgressors in a self-involving case. But where an authority is assigning punishment, the jurors can afford to be magnanimous in their punishment recommendations since the authority will probably base punishment on precedents and not on jurors recommendations. A question for further research is whether, in such a self-involving case, jurors will recommend as lenient punishments when they are led to believe that the authority will be influenced by juror recommendations.

In both hypothetical and real decisions when an authority controls punishment, what the juror recommends does not matter, and so social desirability (i.e., the appearance of magnanimity) may play a role in recommendations. When recommendations do matter (e.g., in real decisions, and where the juror controls punishment), self-interest takes precedent.

Further questions are raised by these data for future research. Research could, for example, portray the judge who controls punishment in different shades of harshness; will jurors who control punishment be more lenient than those who do not when the judge is portrayed as lenient? Will the same effect for control be true for different cases, that is, issues that do not personally involve the juror?

The issue of punishment control is highly pertinent to recent developments in the law. Many states now provide for a bifurcated trial procedure in serious cases (e.g., capital offenses) whereby the same jury that determines guilt also imposes punishment in a separate phase. Thus, punishment is in the hands of those reaching the verdict. Since

Witherspoon v. Illinois (1968), there has been concern over excluding jurors opposed to the death penalty since this compromises representativeness and removes from the guilt-finding phase jurors who are more likely to be acquittal prone (Jurow, 1968). Jurors are presently excludable if they (1) would automatically vote against death in the penalty phase, or (2) could not fairly determine guilt in the guilt phase because of the death penalty. It has been argued in recent decisions (Hovey v. Superior Court of Alemeda County, 1980; State v. Avery, 1979) that a different set of jurors be empaneled in the penalty phase, so that jurors who would vote against death as a penalty can be included in the guilt phase (but still excluded in the penalty phase). In short, there is an argument that severe penalties be put in the control of juries other than those reaching the verdict. This study suggests caution in this regard. While a severe penalty would not differentiate, in the guilt phase, between those with or without penalty control when the evidence is strong, the same is not true when evidence is mildly incriminating. In such borderline cases, persons with control over the penalty will be more stringent in the guilt phase than those without control, particularly when severe penalties are in force (see row three in Tables 1 and 2). In fact, jurors with penalty control in borderline cases will be as conviction prone as persons judging strongly incriminating cases (rows one and two).

In most criminal trials, jurors do not participate in the penalty phase. However, there are instances where jurors do control penalty, as in civil damage suits. Bench trials, too, involve the verdict-maker in the penalty phase. Along with the above example of capital cases, these

instances suggest that the option exists in legal procedure for those reaching the verdict to be involved or not in fixing of penalty; consider, for example, that the defendant in a criminal trial has the choice of a jury or a bench trial. This study shows that the effect of penalty control interacts with severity of penalty and strength of evidence in determining likelihood of conviction. This is important to note in an era where stricter and more certain penalties are being advocated and enacted.

It is a jump from judgments of cheating to criminal and civil trials. While students were quite involved in their evaluations of cheating, the infraction is not as serious in nature as found in the trials to which we generalize. The use of cheating was dictated by the necessity of devising a charge which would be credible to a mock jury; it would be difficult to present a more serious case to an experimental jury and give the illusion of a real judgment. However, this is the first test of questions of severity, control, and strength of evidence, and the suggestive results are worthy of further study, perhaps by field research with functioning juries.

In summation, there are differences between jurors who do, or do not, participate in both phases of a bifurcated trial. Further research on conditions affecting these differences (e.g., type of case, strength of evidence, juror attitudes) is needed before accepting jurors with and without penalty control as equivalent in their guilt adjudications.

Footnotes

1. The overall analysis statistically compared real and hypothetical judgment conditions as levels of type of conditions. While the treatment of subjects in the two conditions was quite different, the differences comprised the distinction between real and hypothetical judgments (e.g., judging during a class section versus volunteering for an experiment) and may be considered as part of the conceptual manipulation. Moreover, since the hypothetical condition volunteers came from the same population as the "captives" in the real condition (Introductory Psychology students) there is little reason to suspect any important subject differences. Nearly all students in Introductory Psychology volunteer for experiments in the course of a semester.

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Table 1

Number of Guilt Verdicts in Cases

Giving Strong or Weak Evidence

Strong Evidence

		Punishment			
		Severe		Mild	
	(Source)	Authority	Student	Authority	Student
Condition	Real	17	16	18	17
	Simulated	18	16	17	15

Weak Evidence

		Punishment			
		Severe		Mild	
	(Source)	Authority	Student	Authority	Student
Condition	Real	2	18	6	15
	Simulated	9	6	5	6

Table 2

Mean Certainty of Guilt Scores in Cases Giving Strong or Weak Evidence

Strong Evidence

		Punishment			
		Severe		Mild	
	(Source)	Authority	Student	Authority	Student
Condition	Real	16.63	15.08	17.16	15.91
	Simulated	15.11	15.89	16.61	15.55

Weak Evidence

		Punishment			
		Severe		Mild	
	(Source)	Authority	Student	Authority	Student
Condition	Real	7.44	16.11	10.61	15.97
	Simulated	10.78	9.39	7.78	8.72

Table 3

Mean Severity Value of Punishments Selected

In Cases Giving Strong or Weak Evidence

Strong Evidence

		Punishment			
		Severe		Mild	
	(Source)	Authority	Student	Authority	Student
Condition	Real	14.86	12.96	7.72	7.59
	Simulated	13.73	12.69	7.21	7.51

Weak Evidence

		Punishment			
		Severe		Mild	
	(Source)	Authority	Student	Authority	Student
Condition	Real	12.21	12.80	6.29	8.19
	Simulated	11.27	12.13	6.64	8.31